

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

GILBERT JAMES

Plaintiffs,
v.

ENCORE CAPITAL GROUP, INC. et als.,

Defendants.

Civil No. 3:11-cv-221

**PLAINTIFF'S POSITION STATEMENT
REGARDING CONSENT TO MAGISTRATE JURISDICTION**

Plaintiff's counsel has met and conferred with Defendants' attorneys on multiple occasions regarding the Court's June 30, 2011 Order (Docket # 20) as well as additional pretrial and case management issues. This filing represents Plaintiff's position statement in response to the Court's Order.

The Equifax Case Will be Dismissed without Prejudice

Initially, Plaintiff advises the Court of his intent, shared with Equifax, to stipulate to the dismissal (without prejudice) of his claim against Equifax Information Services, LLC ("Equifax"). Mr. James' claims overlap with the class action claim in *Donna Soutter v. Equifax Information Services, LLC*, 3:10-cv-00107 (Mr. James' claim post-dates the *Soutter* class definition, but is otherwise similar). Therefore, Equifax and Mr. James have agreed that the case should be held in abeyance until the Fourth Circuit has resolved the Rule 23(f) appeal. The Encore Capital Group, Inc. Defendants ("Encore") have consented to the stipulation. An agreed Order will be filed shortly. Accordingly,

Equifax's consent or non-consent to Magistrate Jurisdiction is resolved and now immaterial in the instant case.

**Plaintiff will object and not consent to Magistrate Jurisdiction
if Encore's Willingness to do so is not Uniform**

As the Court obviously knows, both Richmond Magistrate Judges are capable and fair jurists. They are both familiar with presiding over consumer cases such as this. Judge Dohnal has managed several "mass tort" sets of related consumer cases. Judge Lauck has substantive experience with the specific defendant and allegations raised in this case. However, and with sincere respect to this Court's docket, which counsel recognizes to be congested and would be assisted by the Plaintiff's consent, the Plaintiff nevertheless has valid reason given the substance of the Plaintiff's allegations to withhold consent at this time. The Plaintiff would consent to Magistrate jurisdiction in this case if it were consolidated with another pending Encore case, *Adkins et al v. Encore Capital Group, Inc. et al*, 3:11-cv-00334-JRS, and assigned to a single Magistrate Judge. Accordingly, Plaintiff's attorneys have advised Encore's lead counsel, John Lynch, that their clients have agreed to consent to Magistrate jurisdiction if such consent serves the purpose of consolidating both Encore cases currently pending in the Richmond Division. As of the date and time of this filing, Encore's counsel has not informed Plaintiff's counsel of its position in such regard.

The administrative benefit to the Court and to the Parties, including other consumers represented by Plaintiff's counsel, in consolidating the Encore cases before a single Magistrate Judge would be substantial. The benefits would overwhelm any perceived advantage Encore or Plaintiff would obtain if the cases are otherwise retained in one District Court docket or another.

The desire to obtain uniformity by consolidation was expressed by Defendants' counsel when arguing to this Court and Chief Judge Spencer that other pending Encore cases should be consolidated before Judge Hudson, who had previously presided over a different Midland Capital Management case on his docket. On June 8, 2011, the Defendants sent a letter to the Clerk of the Court and various District Judges requesting that the *James* and *Adkins* cases be assigned to a single District Judge for handling all further proceedings. *Anthony Letter*, June 8, 2011. Encore cited numerous reasons why the same judge should preside over these matters, including that they have "significant factual and legal overlap" and that "[a]ssigning them to a single judge should avoid duplicative efforts and benefit the litigants, the Court, and the administration of justice." *Id.* at 3.

Plaintiff agrees. However, Encore has not yet communicated to Plaintiffs its position regarding Defendants' willingness to agree to consolidation and Magistrate jurisdiction in both pending Encore cases. While Plaintiff and other consumers represented by his counsel do not wish to consent solely in those cases hand-selected by Encore, Plaintiff's counsel is willing to do so with approval of their clients if so in every case.

Respectfully submitted,

GILBERT JAMES

/s/

Susan M. Rotkis
VSB #40693
CONSUMER LITIGATION ASSOC., P.C.
12515 Warwick Boulevard, Suite 100
Newport News, Virginia 23606
(757) 930-3660 - Telephone
(757) 930-3662 – Facsimile
E-Mail: srotkis@clalegal.com

Matthew J. Erausquin, VSB #65434
CONSUMER LITIGATION ASSOCIATES, P.C.
110 South Union Street, #301
Alexandria, VA 22314
703-273-7770 - Telephone
888-892-3512 - Facsimile
E-mail: matt@clalegal.com

Leonard A. Bennett, Esq.
VSB #37523
CONSUMER LITIGATION ASSOCIATES, P.C.
12515 Warwick Boulevard, Suite 100
Newport News, Virginia 23606
(757) 930-3660 - Telephone
(757) 930-3662 – Facsimile
E-mail: lenbennett@clalegal.com

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2011, I will file the foregoing with the court using CM/ECF, which shall send an electronic copy to the following counsel of record:

David Neal Anthony
Troutman Sanders, LLP
Troutman Sanders Bldg
1001 Haxall Point
PO Box 1122
Richmond, VA 23218-1122
E-mail: david.anthony@troutmansanders.com

John C. Lynch
Troutman Sanders LLP
P. O. Box 61185
222 Central Park Ave
Suite 2000
Virginia Beach, VA 23462
E-mail: john.lynch@troutmansanders.com

Timothy James St. George
Troutman Sanders, LLP
1001 Haxall Point
PO Box 1122
Richmond, VA 23218-1122

E-mail: tim.stgeorge@troutmansanders.com

*Counsel for Encore Capital Group, Inc., Midland Funding, LLC
& Midland Credit Management, Inc.*

John Willard Montgomery, Jr.
Montgomery & Simpson, LLLP
2116 Dabney Rd
Suite A-1
Richmond, VA 23230
E-mail: jmontgomery@jwm-law.com

Keasha Ann Broussard
King & Spalding
1180 Peachtree Street NE
Atlanta, GA 30309-3521
E-mail: abroussard@kslaw.com

Counsel for Equifax Information Services, LLC

/s/

Susan M. Rotkis
VSB #40693
CONSUMER LITIGATION ASSOC., P.C.
12515 Warwick Boulevard, Suite 100
Newport News, Virginia 23606
(757) 930-3660 - Telephone
(757) 930-3662 – Facsimile
E-Mail: srotkis@clalegal.com